

Objection Deadline: January 31, 2019 at 4:00 pm

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:)	
)	Chapter 11
SEARS HOLDING CORPORATION, <i>et al.</i>)	
)	Case No. 18-23538 (RDD)
)	(Jointly Administered)
)	
DEBTOR.)	(Objection to ECF No. 1774)

**OBJECTION OF BROAD STREET STATION, LLC C/O COLLETT TO
SUPPLEMENTAL NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN
CONNECTION WITH GLOBAL SALE TRANSACTIONS**

Broad Street Station, LLC c/o Collett (“*BSS*”), by and through the undersigned counsel hereby files this objection to the Debtors’ Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction (ECF No. 1774) (the “*Supplemental Notice*”) and states as follows:

1. The Debtors filed voluntary petitions under Chapter 11 of Title 11 of the United States Code on October 15, 2018 (the “*Petition Date*”).
2. As of the Petition Date, BSS, as landlord and successor in interest to Collett, Branstrom and Associates, and Kmart Corporation (“*Debtor-Tenant*”), as tenant, were parties to that certain Lease dated as of April 5, 1989 (as amended from time to time, including all Amendments relating thereto, the “*Lease*”). A true and correct copy of the Lease is annexed hereto as **Exhibit “A”**. The Lease details the obligations of the parties with respect to the premises generally described as Kmart Store No. 3808, located at 1530 East Broad Street, Statesville, North Carolina.

3. On January 23, 2019, the Debtors filed the Supplemental Notice indicating that the Lease may be assumed and assigned pursuant to the Global Bidding Procedures Order (ECF No. 816). In the Supplemental Notice, Debtors list the Counter Party Name as “Collett & Associates, Inc.” In addition to incorrectly identifying the Counter Party to the Lease, the Supplemental Notice inaccurately states a cure amount of \$7,554.45.

4. The Debtor-Tenant is in default under the terms of the Lease for failing to timely pay real estate taxes due and owing under the terms of the Lease. A true and correct copy of the unpaid tax statement is annexed hereto as **Exhibit “B”**. The Lease additionally provides for recovery of reasonable attorneys’ fees and costs incurred in connection with Debtor-Tenant’s failure to comply with certain Lease terms.

5. Section 365(b)(1) of the Bankruptcy Code provides, in relevant part, that “if there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of the assumption of such contract or lease, the trustee (A) cures, or provides adequate assurance that the trustee will promptly cure, such default...” Section 365(d)(3) similarly requires a debtor in possession to “timely perform all the obligations of the debtor... arising from and after the order for relief under any unexpired lease of non-residential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title.” The payment of attorney fees under Section 365(d)(3) is required when the lease at issue provides for such recovery as an obligation of the Debtor. *In re Ames Dept. Stores, Inc.*, 306 B.R. 43, 81 (Bankr. S.D.N.Y. 2004) (citing *In re Westview 74th St., Drug Corp.*, 59 B.R. 747, 756-57 (Bankr. S.D.N.Y. 1986)) (noting that because the lease provided for recovery of attorneys’ fees and interest in an action to enforce the lease, the claim deserved the

same priority under Section 365(d)(3) as any of the Debtor's other obligations that arise post-petition).

6. This Objection seeks to (a) correct the Counter Party name to "Broad Street Station, LLC"; (b) provide the accurate cure claim of \$41,682.82 as of January 31, 2019; and (c) determine entitlement to attorneys' fees and costs incurred in connection with this dispute. A true and correct copy of the Kmart/Broad Street Station Lease Ledger is attached hereto as **Exhibit "C"**. To assume the Lease, the Debtor-Tenant must cure the above referenced defaults.

7. BSS expressly reserves the right to supplement and amend this Objection including, without limitation, to update post-petition amounts due and owing under the Lease and attorneys' fees and costs relating to the enforcement of same.

Dated: New York, New York
January 31, 2019

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Objection of Broad Street Station, LLC c/o Collett to Debtors' Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection With Global Sale Transactions has been provided via transmission of Notice of Electronic Filing generated by CM/ECF on all parties of record, and on parties on the Service List as indicated below:

Dated: January 31, 2019
New York, New York

/s/ Marie Polito Hofsdal

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